# IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

OSE ANGEL OCON,

Appellant,

VS.

LBERT DEL GUERCIO, ACTING OFFICER N CHARGE OF THE IMMIGRATION AND NATURALIZATION SERVICE, LOS ANGELES, CALIFORNIA,

Appellee.

### PETITION FOR REHEARING

APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

## FILED

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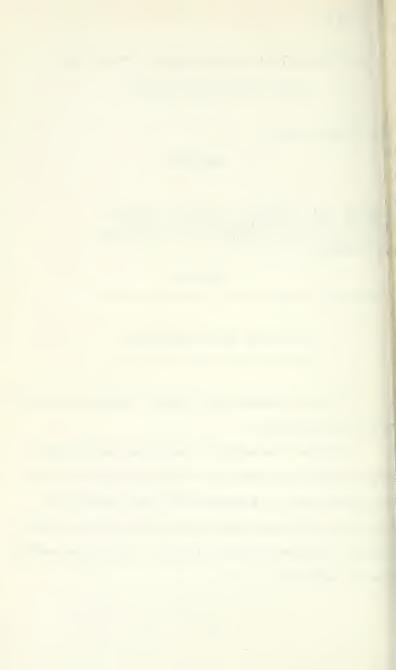
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Appellee.

### PETITION FOR REHEARING

TO THE HONORABLE CIRCUIT JUDGES STEPHENS, EEE AND CHAMBERS:

Petitioner respectfully requests that the Honorable udges of this Court rehear and review the decision handed own by this Court on September 26, 1956, wherein the adgment for the United States District Court for the Southern District of California, Central Division, in the above entitled ase was affirmed.



### STATEMENT OF GROUNDS

This petition for rehearing and review is based upon ne following grounds: That the interest of justice will best e served by granting a rehearing in this case because the constitutional questions raised herein and adversely ruled pon by this Court are presently before the United States upreme Court in a pending case, and the decision in that ase must control the Court's ruling here.

II.

### ARGUMENT

This Court held that the contention that the 1952 mmigration and Nationality Act violates the Constitution is rithout merit because challenges to the constitutionality of he statute in question on the grounds that it violates due process, constitutes a Bill of Attainder and an expost facto aw, and violates freedom of speech and association have already been rejected in Galvan v. Press, 9 Cir., 1953, 201 Fed. 2d 302, Affirmed 1954, 347 U.S. 522, rehearing denied 348 U.S. 852, and numerous cases following the Galvan decision. As this Court itself pointed out, however, the lecision in the Galvan case involved the Internal Security Act



o 1950, 64 Stat. 987, Title 50 U.S.C. §781 et seq., although Cain v. Boyd, 14633, 9 Cir., decided August 4, 1956. Fed. 2d , held that the reasoning of the Galvan cse was equally applicable to the 1952 Immigration and Mitionality Act. The case of Rowaldt v. Perfetto, 8 Cir., 1958 28 Fed. 2d 109, was a case raising the unconstitutionality of te 1952 Immigration and Nationality Act on the same grounds a raised in the instant case. In the Rowaldt case, the petition fr a writ of certiorari raised two questions, the first being hether or not Rowaldt's membership in the Communist Party as sufficient to support a finding that he was deportable on at ground or that he had only been a nominal member and rerefore not subject to deportation, and secondly, whether the 952 Immigration and Nationality Act's provisions for deportaon of aliens for past Communist Party membership was nconstitutional on its face or as applied to facts in the instant ase. See 25 L.W. 3004. The second point raised in the lowaldt petition for certiorari covers the constitutional points aised in the instant case. Certiorari was granted by the Inited States Supreme Court on March 26, 1956. 350 U.S. 993 This was an unconditional grant of certiorari covering both points.

The Rowaldt case was not cited to the Court here in oriefs or in oral argument. By its unconditional grant of



ctiorari, the United States Supreme Court indicates that it may be ready to apply the reasoning in the Galvan case to the 1959 migration and Nationality Statute. The case of Rowaldt v. Prfetto is presently scheduled for argument before the United Sites Supreme Court during the week of October 15, 1956. L. W. 3108. It is respectfully submitted that the decision of he District Court in the instant case should be reheard and viewed by this Court, and that this Court, in the interests of stice, should await the outcome of the United States Supreme burt's ruling in the Rowaldt case and render its decision on the enstitutional points raised herein in conformity with that decision Respectfully submitted, IRWIN GOSTIN

Attorney for Appellant.

ecord for the appellant herein, that in his judgment and opinion e within Petition for Rehearing is well founded, and that said etition for Rehearing is not interposed for any purpose of delay at is submitted solely in the interests of justice.

IRWIN GOSTIN hereby certifies that he is the attorney of

IRWIN GOSTIN

